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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

TD 9290

RIN 1545-BB96

Miscellaneous Changes to Collection Due Process Procedures Relating to Notice and Opportunity for Hearing upon Filing of Notice of Federal Tax Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations amending the regulations relating to a taxpayer's right to a hearing under section 6320 of the Internal Revenue Code of 1986 after the filing of a notice of Federal tax lien (NFTL). The final regulations make certain clarifying changes in the way collection due process (CDP) hearings are held and specify the period during which a taxpayer may request an equivalent hearing. The final regulations affect taxpayers against whose property or rights to property the Internal Revenue Service (IRS) files a NFTL.

DATES: Effective Date: These regulations are effective on November 16, 2006.

Applicability Date: These regulations apply to requests

for CDP or equivalent hearings on or after November 16, 2006.

FOR FURTHER INFORMATION CONTACT: Laurence K. Williams, 202-622-3600 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the provision of notice under section 6320 of the Internal Revenue Code to taxpayers of a right to a CDP hearing (CDP Notice) after the IRS files a NFTL. Final regulations (TD 8979) were published on January 18, 2002, in the **Federal Register** (67 FR 2558) (the 2002 final regulations). The 2002 final regulations implemented certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-206, 112 Stat. 685)(RRA 1998), including the addition of section 6320 to the Internal Revenue Code.

Section 3401 of RRA 1998 also added section 6330 to the Internal Revenue Code. That statute provides for notice to taxpayers of a right to a hearing before or, in limited cases, after levy. A number of the provisions in section 6330 concerning the conduct and judicial review of a CDP hearing are incorporated by reference in section 6320. On January 18,

2002, final regulations (TD 8980) under section 6330 were published in the **Federal Register** (67 FR 2549) along with the 2002 final regulations under section 6320.

On September 16, 2005, the IRS and the Treasury Department published in the **Federal Register** (70 FR 54681) a notice of proposed rulemaking and notice of public hearing (REG-150088-02). The IRS received one set of written comments responding to the notice of proposed rulemaking. Because no one requested to speak at the public hearing, the hearing was cancelled. After considering each of the comments, the proposed regulations are adopted as amended by this Treasury decision.

On August 17, 2006, the Pension Protection Act of 2006, Public Law 109-280, 120 Stat. 780 (the PPA), was enacted. Section 855 of the PPA amended section 6330(d) of the Internal Revenue Code to withdraw judicial review of CDP notices of determination from United States district court jurisdiction, leaving review solely in the United States Tax Court. Section 6330(d) is made applicable to section 6320 hearings by section 6320(c). The amendment to section 6330(d), effective for notices of determination issued on or after October 17, 2006, requires the removal of references to district court review in the 2002 final regulations. This Treasury decision removes

those references.

The IRS and the Treasury Department have determined that a notice of proposed rulemaking and solicitation of public comments are not required to amend the regulations to implement the modification to section 6330(d). These amendments are made solely to conform the regulations to a statutory change enacted by Congress. Because the amendments do not involve any exercise of discretion or interpretation, the notice and public comment procedures are unnecessary.

The comments and changes to the proposed regulations, and the amendments required by the Congressional modification to section 6330(d), are discussed below.

Summary of Comments and Explanation of Changes

The comments suggested that the IRS be required to contact taxpayers who timely file an incomplete request for CDP hearing to give them the opportunity to perfect the request within a reasonable time period and further recommended that such contact be in writing and identify the infirmity requiring perfection. The comments also recommended that the final regulations establish a specific time period during which taxpayers may, by right, amend or perfect their previously-filed yet incomplete CDP hearing request. The request, according to the comments, should be considered

timely if it is perfected within the applicable time period.

Currently, the practice of the IRS is to contact taxpayers whose hearing requests fail to satisfy the requirements specified by the existing regulations and ask these taxpayers to perfect their requests within a specified period of time. The IRS considers requests perfected within the time specified to be timely. The intention of the IRS and the Treasury Department is to incorporate this administrative procedure into the proposed regulations. The final regulations more clearly state that the IRS will make a reasonable attempt to contact taxpayers to give them a reasonable period of time to perfect incomplete requests. However, the timeframe in which to respond to the request, and the method of delivery of the request (i.e., orally or in writing) are more appropriately addressed in the Internal Revenue Manual. The final regulations make clear that requests perfected within the time period specified by the IRS will be considered timely.

The final regulations do not adopt the suggestion to establish a period of time during which a taxpayer is allowed to perfect an incomplete request, without regard to a perfection request from the IRS. The IRS and Treasury Department believe that the procedure incorporated into the

final regulations is sufficient to permit taxpayers to ensure their requests are complete.

The comments recommended that the IRS Office of Appeals (Appeals) be given the discretion to permit a taxpayer to amend an imperfect hearing request after the period for perfecting the request has expired, if the taxpayer can demonstrate that such amendment furthers an alternative to collection. This change to the regulations is unnecessary because Appeals is already empowered to exercise this discretion. Neither the current regulations nor the proposed amendments limits Appeals from exercising this discretion. Accordingly, the final regulations do not adopt this recommendation. Further clarification, however, will be provided in the Internal Revenue Manual.

The comments suggested that where a taxpayer fails to perfect a CDP hearing request until after the time period specified by the IRS, the perfected request should be automatically treated as a request for an equivalent hearing. Treating untimely perfected requests as equivalent hearing requests may unduly prolong the process in cases in which a taxpayer does not want an equivalent hearing. Accordingly, the final regulations do not adopt this suggestion. The final regulations, however, provide that Appeals will determine the

timeliness of CDP hearing requests. The final regulations also add to the proposed regulations that taxpayers making an untimely request will be provided the opportunity to have the request for CDP hearing treated as a request for equivalent hearing, without submitting an additional request.

The comments requested that the final regulations give taxpayers whose hearing requests might be construed as making a frivolous argument the right to amend their hearing requests to raise relevant, non-frivolous issues. The comments further recommended that all taxpayers be given the right to supplement the hearing request prior to the conference conducted by Appeals.

These comments indicate concern that taxpayers may be unable to articulate reasons for disagreeing with the collection action that are satisfactory to Appeals. The reasons for disagreeing with the collection action need not be detailed. To assist taxpayers in articulating reasons, the IRS is revising Form 12153, "Request for a Collection Due Process Hearing," to add examples of the most common reasons taxpayers give for requesting a hearing, including requests for collection alternatives. In any event, the informal nature of the CDP hearing permits taxpayers and Appeals to discuss collection alternatives and issues not listed in the

hearing request if such discussion will help resolve the case. Accordingly, the final regulations do not adopt these recommendations.

The comments urged that the final regulations guarantee a face-to-face conference for each taxpayer who presents a relevant, non-frivolous reason for disagreement with the collection action. If this recommendation is not adopted, the comments suggest that the regulations address and provide examples of when a face-to-face conference will not be granted. The final regulations do not adopt the recommendation to guarantee a face-to-face conference for each taxpayer raising a relevant, non-frivolous issue. The IRS and the Treasury Department agree with the comments that a face-to-face conference can be a useful forum for resolving a taxpayer's issues. The final regulations recognize the importance of a face-to-face meeting by providing that taxpayers will ordinarily be offered an opportunity for a face-to-face conference. There will be instances, however, when a face-to-face conference is not practical. The final regulations identify typical situations in which a face-to-face conference will be neither necessary nor productive. Except for these situations, the IRS and the Treasury Department anticipate that Appeals will afford a face-to-face

meeting to taxpayers who request one. Nonetheless, unanticipated circumstances may arise in which granting a face-to-face conference will not be appropriate. The final regulations give Appeals the flexibility needed to respond to unanticipated circumstances.

Adoption of the comment requesting guidance on when a face-to-face conference will not be granted is unnecessary. The final regulations retain descriptions of situations in which a face-to-face conference will not be granted, as illustrated in the proposed regulations. Further guidance on granting face-to-face conferences will be provided in the Internal Revenue Manual.

The comments suggested that a taxpayer who appears to be presenting only frivolous reasons be given an opportunity to provide relevant, non-frivolous reasons in order to obtain a face-to-face conference. Adoption of this recommendation is unnecessary. Correspondence sent by Appeals to taxpayers who make only frivolous arguments invites them to submit relevant, non-frivolous reasons. Appeals offers face-to-face conferences to taxpayers who respond by providing such reasons.

The comments also suggested that the regulations define relevant and frivolous. The IRS and the Treasury Department

believe that any attempt to define these terms is unnecessary and could result in underinclusive definitions. For example, the comments suggest that a frivolous issue be defined as an issue that is the same or substantially similar to an issue identified as frivolous by the IRS in published guidance. It is not possible to anticipate or keep pace with the evolution of frivolous arguments through published guidance. Instead, taxpayers are advised to consult the lists of examples of frivolous arguments in IRS Publication 2105, "Why Do I Have to Pay Taxes" and on the IRS website in a document entitled "The Truth about Frivolous Tax Arguments." The names and web addresses of these documents, and a toll-free number to order Publication 2105, will be added to the instructions to Form 12153 to help taxpayers avoid making these arguments.

The comments recommended clarification of the proposed rule that a face-to-face conference concerning a collection alternative will not be granted unless the alternative would be available to other taxpayers in similar circumstances. According to the comments, a taxpayer should not be denied a face-to-face conference because the requested collection alternative cannot be accepted, for example, because it appears from financial information that the taxpayer can pay the liabilities in full. This proposed rule was not intended

to deny a face-to-face conference because the requested collection alternative would not be accepted. The intention of this rule is to permit the denial of a face-to-face conference to discuss a collection alternative for which the taxpayer is not eligible. A lack of eligibility under IRS policy is tied to a taxpayer's compliance with the Federal tax laws, not to the taxpayer's financial circumstances or ability to request the most appropriate alternative. For example, if the taxpayer has not filed all required tax returns, the taxpayer is not eligible for an offer to compromise or an installment agreement.

In response to the concerns expressed in the comments, the final regulations amplify the rule that a face-to-face conference to discuss a collection alternative will not be granted unless other taxpayers would be eligible for the alternative in similar circumstances. The final regulations provide in A-D8 that Appeals in its discretion may grant a face-to-face conference if Appeals determines that a face-to-face conference is appropriate to explain to the taxpayer the requirements for becoming eligible for a collection alternative. The final regulations also provide that taxpayers will be given an opportunity to demonstrate they are eligible for a collection alternative in order to obtain a

face-to-face conference to discuss the alternative. Taxpayers will also be given an opportunity to become eligible for a collection alternative in order to obtain a face-to-face conference. For example, under the final regulations, if a taxpayer appears to have failed to file all required returns (and thus appears not to be eligible for an offer to compromise or an installment agreement), the taxpayer will be given an opportunity to demonstrate the inapplicability of the filing requirements or to file delinquent returns, in order to obtain a face-to-face conference. The final regulations further provide that a taxpayer's eligibility for a collection alternative does not include the taxpayer's ability to pay the unpaid tax.

The comments expressed concern that the amendment providing a face-to-face conference at an Appeals office other than an office in which all officers or employees had prior involvement could be construed as giving Appeals the discretion to deny a face-to-face conference even if the taxpayer would have been granted a face-to-face conference at the original location. The relevant sentence in A-D8 in the final regulations has been rewritten to make clear that Appeals does not have discretion to deny a face-to-face conference at an alternate location if the taxpayer would have

been granted a face-to-face conference but for the disqualification of the Appeals employees at the original location.

The comments suggested that the regulations permit face-to-face conferences to be held not only at the Appeals office closest to the taxpayer's residence or, for a business taxpayer, the taxpayer's principal place of business, but also at the Appeals office closest to the taxpayer's school or place of employment, the authorized representative's place of business, or some other location convenient to the taxpayer or the taxpayer's representative. The IRS and Treasury Department believe the rules for CDP hearings should be consistent with the treatment of other proceedings in Appeals. The long-standing practice of Appeals in cases not docketed in the Tax Court is to grant face-to-face conferences in the Appeals office closest to the taxpayer's residence or principal place of business. The practice is retained in the final regulations. Appeals will, however, attempt to accommodate reasonable requests to hold the face-to-face conference at an Appeals office more convenient to the taxpayer.

The comments expressed concern that the definition of prior involvement under section 6320(b)(3) or 6330(b)(3) in

the proposed regulations could be construed too narrowly in two ways. First, the definition of prior involvement as involvement in a prior hearing or proceeding could be read to exclude involvement in some informal settings, e.g., the Appeals officer's participation in a mediation session. In order to clarify that no such limitation is intended, the final regulations substitute matter for hearing or proceeding in A-D4 of paragraph (d)(2). Second, defining prior involvement to exist when the Appeals officer previously considered the same tax liability could be construed as excluding from the definition instances in which the Appeals officer previously considered questions bearing only on collection issues. The final regulations adopt the suggestion in the comments to remove the word liability in A-D4 in order to eliminate the potential interpretation that there is a distinction between liability and collection issues in determining prior involvement.

The comments also requested that a mediation example be added to paragraph (d)(3). The IRS and the Treasury Department believe that the change made to A-D4 adequately clarifies the definition of prior involvement. This example and others will be added to the Internal Revenue Manual to ensure the proper administration of sections 6320(b)(3) and

6330(b)(3).

The comments recommended that the regulations address the treatment of ex parte communications during CDP hearings. The rules applicable to ex parte communications during CDP hearings and other Appeals proceedings are provided in Rev. Proc. 2000-43, 2000-43 I.R.B. 404. Therefore, these rules are not duplicated in the regulations under sections 6320 and 6330.

The comments recommended that the regulations be amended to provide that self-reported tax liabilities may be disputed in a CDP hearing. The final regulations adopt this recommendation. See also Montgomery v. Commissioner, 122 T.C. 1 (2004), acq. 2005-51 I.R.B. 1152.

The comments also requested changes in the existing regulations' interpretation of preclusive events under section 6330(c)(2)(B). Under section 6330(c)(2)(B), during a CDP hearing, a taxpayer may challenge the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability. Section 6330(c)(2)(B) is made applicable to section 6320 hearings by section 6320(c). According to the comments, the only opportunity to dispute the

tax liability that is sufficient to prevent the taxpayer from challenging the liability in a CDP hearing is the prior opportunity to dispute the liability in a judicial forum. The IRS and the Treasury Department believe that the existing regulations correctly include an opportunity for an Appeals conference as a preclusive prior opportunity. The text of section 6330(c)(2)(B) does not contain language limiting prior opportunities to judicial proceedings. Moreover, it is consistent for a taxpayer who has had an opportunity to obtain a determination of liability by Appeals in one administrative hearing to be precluded from obtaining an Appeals determination in a subsequent CDP administrative hearing with respect to the same liability. This interpretation of section 6330(c)(2)(B) has been upheld by the courts. See, e.g., Pelliccio v. United States, 253 F. Supp. 2d 258, 261-62 (D. Conn. 2003). Accordingly, the final regulations do not adopt this suggestion.

Alternatively, the comments also recommended that the regulations specify that a pre-CDP Appeals conference is not a prior opportunity to dispute liability under section 6330(c)(2)(B) if the receipt of the conference was conditioned upon the taxpayer's agreement to extend the assessment statute of limitations with respect to the liability and the taxpayer

declined to extend the statute. The IRS and Treasury Department believe this addition is unnecessary. For taxes subject to deficiency procedures, the relevant, pre-assessment "prior opportunity" is the receipt of the notice of deficiency. The offer of an Appeals conference prior to receipt of the notice of deficiency does not constitute an opportunity to dispute liability under section 6330(c)(2)(B). This interpretation of section 6330(c)(2)(B) has been added to paragraph (e)(3) A-E2 to remove any uncertainty about this matter. For liabilities not subject to deficiency procedures, the offer of an Appeals conference prior to assessment constitutes an opportunity to dispute the liability under section 6330(c)(2)(B). Appeals conferences to consider these types of liabilities are rarely conditioned upon an extension of the assessment statute of limitations. The IRS generally makes conditional offers of a conference only when a taxpayer makes an untimely request for review of a proposed Trust Fund Recovery Penalty pursuant to a Letter 1153 and less than one year remains on the assessment statute of limitations. In this circumstance, however, the opportunity for an Appeals conference offered in the Letter 1153 constitutes the opportunity to dispute the liability under section 6330(c)(2)(B). The conditional offer made after the

expiration of the prior opportunity provided in the Letter 1153 is irrelevant. For these reasons, the final regulations do not adopt this comment.

The comments objected to the addition of a definition of administrative record to the regulations as an attempt to overrule the Tax Court's decision in Robinette v. Commissioner, 123 T.C. 85 (2004), rev'd, 439 F.3d 455 (8th Cir. 2006). The assumption that Robinette eliminated any role for an administrative record in CDP court proceedings is not supported by the Court's opinion. While the Tax Court held in Robinette that it was not required to limit its abuse-of-discretion review to the administrative record, it did not reject the utility of an administrative record. Subsequent to the submission of the comments, the United States Court of Appeals for the Eighth Circuit reversed the Tax Court and held that abuse-of-discretion review in CDP cases is limited to the administrative record. Robinette v. Commissioner, 439 F.3d 455 (8th Cir. 2006). For these reasons, it is important that taxpayers and the IRS have a common understanding of the scope of the administrative record. The definition is retained in the final regulations.

The comments suggested that the proposed definition of the administrative record permits Appeals officers and

employees to exclude from the record for judicial review issues, arguments, and evidence presented orally by the taxpayer, and to exclude written communications and documents. The administrative record definition is not intended to suggest that the reviewing court is not permitted to determine the contents of the administrative record or the record's adequacy in an individual case. The reviewing court has the authority to receive evidence concerning what happened during the CDP hearing. The definition is provided to establish for the benefit of the IRS and taxpayers a baseline description of what each administrative record should contain to ensure a record sufficient for judicial review. The final regulations have not been changed in this regard. The final regulations, however, adopt the suggestion that the description of the case file in A-D7 and in the definition of administrative record in A-F6 of the proposed regulations (redesignated as A-F4 in the final regulations) be made consistent.

The comments recommended that the final regulations require each Appeals officer to include in the notice of determination a list of the documents the Appeals officer believes are included in the administrative record. The justification for this proposed requirement is that the list would assist the taxpayer in deciding whether to seek judicial

review. The list of documents, according to the comments, will also assist the court and taxpayers seeking review to more efficiently ascertain whether there was an abuse of discretion.

The final regulations do not adopt this recommendation. Requiring Appeals officers to prepare a list of documents constituting the administrative record in each of the thousands of cases handled each year would impose a heavy burden on Appeals without a commensurate benefit to taxpayers. The notice of determination issued in each case describes the facts and reasons supporting the Appeals officer’s determination and should provide an adequate basis for the taxpayer’s decision whether to seek judicial review.

The IRS and the Treasury Department acknowledge that disputes have arisen with respect to the contents of the administrative record in CDP cases and that there are no special rules in place to resolve these disputes. An appropriate solution could involve the Tax Court's development of rules governing the preparation and submission of the administrative record for abuse-of-discretion review, particularly now that the recently-enacted Pension Protection Act of 2006 requires all CDP cases to be litigated in the Tax Court.

The comments suggested removal of the limitation in the existing regulations that a taxpayer is precluded from obtaining judicial review of an issue not raised with Appeals during the CDP hearing. As an alternative, the comments recommended that a taxpayer only be prevented from raising those issues the taxpayer could have, but failed to raise during the CDP hearing. The limitation in the existing regulations implements a basic principle of administrative law that those seeking review of an issue must first give the agency the opportunity to evaluate and respond to the issue. This limitation has been upheld in the courts. See Robinette v. Commissioner, 123 T.C. 85, 101-102 (2004), rev'd on other grounds, 439 F.3d 455 (8th Cir. 2006); Magana v. Commissioner, 118 T.C. 488, 493 (2002); Abu-Awad v. United States, 294 F. Supp.2d 879, 889 (S.D. Tex. 2003). Accordingly, the final regulations do not adopt either of these recommendations.

The comments recommended that if the limitation on the taxpayer's ability to raise new issues during judicial review is retained, then the amendment to A-F5 (redesignated as A-F3 in the final regulations) should clarify that a taxpayer need not provide the evidence specified by Appeals with respect to an issue in order to present "any evidence" necessary to properly raise the issue. The IRS and the Treasury Department

believe this change is unnecessary. The revision to A-F5 (redesignated as A-F3) does not suggest that the "any evidence" needed to avoid preclusion must be the evidence specified by Appeals. The revised language simply requires that the taxpayer submit some evidentiary support. This suggestion is not adopted in the final regulations.

The comments also suggested adding that a taxpayer need not provide any evidence to avoid preclusion if the case file already contains evidence with respect to that issue. This addition is not necessary. If the case file contains all the information needed for a decision on an issue, an Appeals officer will not request any additional evidence and the revised language in A-F5 (redesignated as A-F3 in the final regulations) will not apply. In the unlikely event that an Appeals officer making a determination on an issue requested information already in the file, a reviewing court should find the taxpayer's failure to provide any evidence does not prevent the issue from being raised. The final regulations do not adopt this recommendation.

The comments urged that the regulations make clear that the authority of Appeals officers to determine the validity, sufficiency and timeliness of a CDP notice does not alter or limit the authority of the reviewing court to make the same

determination. The IRS and the Treasury Department believe this clarification is unnecessary. It is well-settled that reviewing courts have the authority to determine the validity, sufficiency and timeliness of a CDP notice. See, e.g., Kennedy v. Commissioner, 116 T.C. 255 (2001). This clarification is not adopted in the final regulations.

The comments recommended that administrative rules similar to those developed under section 6015 be added to the regulations. The regulations state that a spousal defense raised under section 66 or 6015 is governed by section 66 or 6015 and the regulations and procedures thereunder. See Treas. Reg. § 301.6320-1(e)(2). To the extent it is determined that further guidance is necessary, such guidance will be in the form of additions to the Internal Revenue Manual. The final regulations do not adopt this recommendation.

The final regulations include amendments to the existing regulations to remove references to judicial review by United States district courts. The Pension Protection Act of 2006, Public Law 109-280, 120 Stat. 780, § 855 amended section 6330(d) to eliminate the jurisdiction of the district courts to review notices of determination, leaving the Tax Court with sole jurisdiction. Section 6330(d) is made applicable to

section 6320 hearings by section 6320(c). To make clear in the regulations that judicial review is available only in the Tax Court, Q&A-F3 and Q&A-F4 in the existing regulations are removed by the final regulations and Q&A-F5 and Q&A-F6 in the proposed regulations are redesignated as Q&A-F3 and Q&A-F4 in the final regulations. In addition, only the Tax Court is now mentioned in A-E11, paragraph (f)(1), A-F1, redesignated Q&A-F3 and Q&A-F4, Example 1 of paragraph (g)(3), Q&A-H2 and redesignated Q-I6.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In particular, the IRS and the Treasury Department find for good cause that a notice of proposed rulemaking and solicitation of public comments are unnecessary to amend the existing regulations to implement the modification of section 6330(d) by the Pension Protection Act of 2006, Public Law 109-280, 120 Stat. 780. These amendments are made solely to conform the regulations to the statutory change enacted by Congress. The amendments do not involve any

exercise of discretion or interpretation by the IRS or Treasury Department and the removal of United States district court jurisdiction would become effective even if the amendments were not made. Accordingly, the notice and public comment procedures do not apply. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Laurence K. Williams, Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6320-1 is amended as follows:

1. Paragraph (c)(2) A-C1, Q&A-C6 and A-C7 are revised.

2. Paragraph (d)(2) A-D4 and A-D7 are revised.

3. Paragraph (d)(2) Q&A-D8 is added.

4. Paragraph (d)(3) is added.

5. Paragraph (e)(1) is revised.

6. Paragraph (e)(3) A-E2, A-E6, A-E7 and A-E11 are revised.

7. Paragraph (f)(1) is revised.

8. Paragraph (f)(2) A-F1 is revised.

9. Paragraph (f)(2) Q&A-F3 is removed.

10. Paragraph (f)(2) Q&A-F5 is revised and redesignated Q&A-F3.

11. Paragraph (f)(2) Q&A-F4 is revised.

12. Paragraph (g)(3) Example 1 is revised.

13. Paragraph (h)(2) Q&A-H2 is revised.

14. Paragraph (i)(2) Q-I5 is revised and redesignated Q-I6.

15. Paragraph (i)(2) A-I5 is redesignated A-I6.

16. Paragraph (i)(2) Q&A-I1 through Q&A-I4 are

redesignated Q&A-I2 through Q&A-I5.

17. Paragraph (i)(2) Q&A-I1 and Q&A-I7 through Q&A-I11 are added.

18. Paragraph (j) is revised.

§301.6320-1 Notice and opportunity for hearing upon filing of notice of Federal tax lien.

* * * * *

(c) * * *

(2) * * *

A-C1. (i) The taxpayer must make a request in writing for a CDP hearing. The request for a CDP hearing shall include the information and signature specified in A-C1(ii) of this paragraph (c)(2). See A-D7 and A-D8 of paragraph (d)(2).

(ii) The written request for a CDP hearing must be dated and must include the following:

(A) The taxpayer’s name, address, daytime telephone number (if any), and taxpayer identification number (e.g., SSN, ITIN or EIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the filing of the NFTL.

(E) The reason or reasons why the taxpayer disagrees with the filing of the NFTL.

(F) The signature of the taxpayer or the taxpayer's authorized representative.

(iii) If the IRS receives a timely written request for CDP hearing that does not satisfy the requirements set forth in A-C1(ii) of this paragraph (c)(2), the IRS will make a reasonable attempt to contact the taxpayer and request that the taxpayer comply with the unsatisfied requirements. The taxpayer must perfect any timely written request for a CDP hearing that does not satisfy the requirements set forth in A-C1(ii) of this paragraph (c)(2) within a reasonable period of time after a request from the IRS.

(iv) Taxpayers are encouraged to use Form 12153, "Request for a Collection Due Process Hearing," in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice, by downloading a copy from the IRS Internet site, www.irs.gov/pub/irs-pdf/f12153.pdf, or by calling, toll-free, 1-800-829-3676.

(v) The taxpayer must affirm any timely written request for a CDP hearing which is signed or alleged to have been

signed on the taxpayer's behalf by the taxpayer's spouse or other unauthorized representative by filing, within a reasonable period of time after a request from the IRS, a signed, written affirmation that the request was originally submitted on the taxpayer's behalf. If the affirmation is filed within a reasonable period of time after a request, the timely CDP hearing request will be considered timely with respect to the non-signing taxpayer. If the affirmation is not filed within a reasonable period of time after a request, the CDP hearing request will be denied with respect to the non-signing taxpayer.

* * * * *

Q-C6. Where must the written request for a CDP hearing be sent?

A-C6. The written request for a CDP hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice. If the address of that office does not appear on the CDP Notice, the taxpayer should obtain the address of the office to which the written request should be sent or hand delivered by calling, toll-free, 1-800-829-1040 and providing the taxpayer's identification number (e.g., SSN, ITIN or EIN).

* * * * *

A-C7. If the taxpayer does not request a CDP hearing in writing within the 30-day period that commences on the day after the end of the five-business-day notification period, the taxpayer foregoes the right to a CDP hearing under section 6320 with respect to the unpaid tax and tax periods shown on the CDP Notice. A written request submitted within the 30-day period that does not satisfy the requirements set forth in A-C1(ii)(A), (B), (C), (D) or (F) of this paragraph (c)(2) is considered timely if the request is perfected within a reasonable period of time pursuant to A-C1(iii) of this paragraph (c)(2). If the request for CDP hearing is untimely, either because the request was not submitted within the 30-day period or not perfected within the reasonable period provided, the taxpayer will be notified of the untimeliness of the request and offered an equivalent hearing. In such cases, the taxpayer may obtain an equivalent hearing without submitting an additional request. See paragraph (i) of this section.

* * * * *

(d) * * *

(2) * * *

A-D4. Prior involvement by an Appeals officer or employee includes participation or involvement in a matter (other than

a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the tax and tax period shown on the CDP Notice. Prior involvement exists only when the taxpayer, the tax and the tax period at issue in the CDP hearing also were at issue in the prior non-CDP matter, and the Appeals officer or employee actually participated in the prior matter.

* * * * *

A-D7. Except as provided in A-D8 of this paragraph (d)(2), a taxpayer who presents in the CDP hearing request relevant, non-frivolous reasons for disagreement with the NFTL filing will ordinarily be offered an opportunity for a face-to-face conference at the Appeals office closest to taxpayer's residence. A business taxpayer will ordinarily be offered an opportunity for a face-to-face conference at the Appeals office closest to the taxpayer's principal place of business. If that is not satisfactory to the taxpayer, the taxpayer will be given an opportunity for a hearing by telephone or by correspondence. In all cases, the Appeals officer or employee will review the case file, as described in A-F4 of paragraph (f)(2). If no face-to-face or telephonic conference is held, or other oral communication takes place, review of the documents in the case file, as described in A-F4 of paragraph

(f)(2), will constitute the CDP hearing for purposes of section 6320(b).

Q-D8. In what circumstances will a face-to-face CDP conference not be granted?

A-D8. A taxpayer is not entitled to a face-to-face CDP conference at a location other than as provided in A-D7 of this paragraph (d)(2) and this A-D8. If all Appeals officers or employees at the location provided for in A-D7 of this paragraph (d)(2) have had prior involvement with the taxpayer as provided in A-D4 of this paragraph (d)(2), the taxpayer will not be offered a face-to-face conference at that location, unless the taxpayer elects to waive the requirement of section 6320(b)(3). The taxpayer will be offered a face-to-face conference at another Appeals office if Appeals would have offered the taxpayer a face-to-face conference at the location provided in A-D7 of this paragraph (d)(2), but for the disqualification of all Appeals officers or employees at that location. A face-to-face CDP conference concerning a taxpayer's underlying liability will not be granted if the request for a hearing or other taxpayer communication indicates that the taxpayer wishes only to raise irrelevant or frivolous issues concerning that liability. A face-to-face CDP conference concerning a collection alternative, such as an

installment agreement or an offer to compromise liability, will not be granted unless other taxpayers would be eligible for the alternative in similar circumstances. For example, because the IRS does not consider offers to compromise from taxpayers who have not filed required returns or have not made certain required deposits of tax, as set forth in Form 656, "Offer in Compromise," no face-to-face conference will be granted to a taxpayer who wishes to make an offer to compromise but has not fulfilled those obligations. Appeals in its discretion, however, may grant a face-to-face conference if Appeals determines that a face-to-face conference is appropriate to explain to the taxpayer the requirements for becoming eligible for a collection alternative. In all cases, a taxpayer will be given an opportunity to demonstrate eligibility for a collection alternative and to become eligible for a collection alternative, in order to obtain a face-to-face conference. For purposes of determining whether a face-to-face conference will be granted, the determination of a taxpayer's eligibility for a collection alternative is made without regard to the taxpayer's ability to pay the unpaid tax. A face-to-face conference need not be granted if the taxpayer does not provide the required information set forth in A-C1(ii)(E) of

paragraph (c)(2). See also A-C1(iii) of paragraph (c)(2).

(3) Examples. The following examples illustrate the principles of this paragraph (d):

Example 1. Individual A timely requests a CDP hearing concerning a NFTL filed with respect to the 1998 income tax liability assessed against individual A. Appeals employee B previously conducted a CDP hearing regarding a proposed levy for individual A's 1998 income tax liability. Because employee B's only prior involvement with individual A's 1998 income tax liability was in connection with a section 6330 CDP hearing, employee B may conduct the CDP hearing under section 6320 involving the NFTL filed for the 1998 income tax liability.

Example 2. Individual C timely requests a CDP hearing concerning a NFTL filed with respect to the 1998 income tax liability assessed against individual C. Appeals employee D previously conducted a Collection Appeals Program (CAP) hearing regarding a NFTL filed with respect to individual C's 1998 income tax liability. Because employee D=s prior involvement with individual C's 1998 income tax liability was in connection with a non-CDP hearing, employee D may not conduct the CDP hearing under section 6320 unless individual C waives the requirement that the hearing will be conducted by an Appeals officer or employee who has had no prior involvement with respect to individual C's 1998 income tax liability.

Example 3. Same facts as in Example 2, except that the prior CAP hearing only involved individual C's 1997 income tax liability and employment tax liabilities for 1998 reported on Form 941, "Employer's Quarterly Federal Tax Return." Employee D would not be considered to have prior involvement because the prior CAP hearing in which she participated did not involve individual C's 1998 income tax liability.

Example 4. Appeals employee F is assigned to a CDP hearing concerning a NFTL filed with respect to a trust fund recovery penalty (TFRP) assessed pursuant to section 6672 against individual E. Appeals employee F participated in a prior CAP hearing involving individual E's 1999 income tax liability, and participated in a CAP hearing involving the

employment taxes of business entity X, which incurred the employment tax liability to which the TFRP assessed against individual E relates. Appeals employee F would not be considered to have prior involvement because the prior CAP hearings in which he participated did not directly involve the TFRP assessed against individual E.

Example 5. Appeals employee G is assigned to a CDP hearing concerning a NFTL filed with respect to a TFRP assessed pursuant to section 6672 against individual H. In preparing for the CDP hearing, Appeals employee G reviews the Appeals case file concerning the prior CAP hearing involving the TFRP assessed pursuant to section 6672 against individual H. Appeals employee G is not deemed to have participated in the previous CAP hearing involving the TFRP assessed against individual H by such review.

(e) Matters considered at CDP hearing—(1) In general. Appeals will determine the timeliness of any request for a CDP hearing that is made by a taxpayer. Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to issuance of a determination, Appeals is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative procedure with respect to the filing of the NFTL have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The taxpayer also may raise challenges to the

existence or amount of the underlying liability, including a liability reported on a self-filed return, for any tax period specified on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute the tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6330 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

* * * * *

(3) * * *

A-E2. A taxpayer is entitled to challenge the existence or amount of the underlying liability for any tax period specified on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency determined in the notice of

deficiency. An opportunity to dispute the underlying liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability. An opportunity for a conference with Appeals prior to the assessment of a tax subject to deficiency procedures is not a prior opportunity for this purpose.

* * * * *

A-E6. Collection alternatives include, for example, a proposal to withdraw the NFTL in circumstances that will facilitate the collection of the tax liability, subordination of the NFTL, discharge of the NFTL from specific property, an installment agreement, an offer to compromise, the posting of a bond, or the substitution of other assets. A collection alternative is not available unless the alternative would be available to other taxpayers in similar circumstances. See A-D8 of paragraph (d)(2).

* * * * *

A-E7. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The existence or amount of the underlying liability for any tax period specified in the CDP Notice may be challenged only if the taxpayer did not have a prior opportunity to dispute the tax

liability. If the taxpayer previously received a CDP Notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer had a prior opportunity to dispute the existence or amount of the underlying tax liability.

* * * * *

A-E11. No. An Appeals officer may consider the existence and amount of the underlying tax liability as a part of the CDP hearing only if the taxpayer did not receive a statutory notice of deficiency for the tax liability in question or otherwise have a prior opportunity to dispute the tax liability. Similarly, an Appeals officer may not consider any other issue if the issue was raised and considered at a previous hearing under section 6330 or in any other previous administrative or judicial proceeding in which the person seeking to raise the issue meaningfully participated. In the Appeals officer's sole discretion, however, the Appeals officer may consider the existence or amount of the underlying tax liability, or such other precluded issues, at the same time as the CDP hearing. Any determination, however, made by the Appeals officer with respect to such a precluded issue shall not be treated as part of the Notice of Determination issued by the Appeals officer and will not be subject to any

judicial review. Because any decisions made by the Appeals officer on such precluded issues are not properly a part of the CDP hearing, such decisions are not required to appear in the Notice of Determination issued following the hearing. Even if a decision concerning such precluded issues is referred to in the Notice of Determination, it is not reviewable by the Tax Court because the precluded issue is not properly part of the CDP hearing.

* * * * *

(f) Judicial review of Notice of Determination--(1) In general. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within the 30-day period commencing the day after the date of the Notice of Determination to the Tax Court.

(2) * * *

A-F1. Subject to the jurisdictional limitations described in A-F2 of this paragraph (f)(2), the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court.

* * * * *

Q-F3. What issue or issues may the taxpayer raise before the Tax Court if the taxpayer disagrees with the Notice of Determination?

A-F3. In seeking Tax Court review of a Notice of Determination, the taxpayer can only ask the court to consider an issue, including a challenge to the underlying tax liability, that was properly raised in the taxpayer's CDP hearing. An issue is not properly raised if the taxpayer fails to request consideration of the issue by Appeals, or if consideration is requested but the taxpayer fails to present to Appeals any evidence with respect to that issue after being given a reasonable opportunity to present such evidence.

Q-F4. What is the administrative record for purposes of Tax Court review?

A-F4. The case file, including the taxpayer's request for hearing, any other written communications and information from the taxpayer or the taxpayer's authorized representative submitted in connection with the CDP hearing, notes made by an Appeals officer or employee of any oral communications with the taxpayer or the taxpayer's authorized representative, memoranda created by the Appeals officer or employee in connection with the CDP hearing, and any other documents or

materials relied upon by the Appeals officer or employee in making the determination under section 6330(c)(3), will constitute the record in the Tax Court review of the Notice of Determination issued by Appeals.

(g) * * *

(3) * * *

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the NFTL will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the Tax Court, plus 90 days.

* * * * *

(h) * * *

(2) * * *

Q-H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court?

A-H2. No. As discussed in A-H1, a taxpayer is entitled to only one CDP hearing under section 6320 with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court.

(i) * * *

(2) * * *

Q-I1. What must a taxpayer do to obtain an equivalent hearing?

A-I1. (i) A request for an equivalent hearing must be made in writing. A written request in any form that requests an equivalent hearing will be acceptable if it includes the information and signature required in A-I1(ii) of this paragraph (i)(2).

(ii) The request must be dated and must include the following:

(A) The taxpayer’s name, address, daytime telephone number (if any), and taxpayer identification number (e.g., SSN, ITIN or EIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer is requesting an equivalent hearing with Appeals concerning the filing of the NFTL.

(E) The reason or reasons why the taxpayer disagrees with the filing of the NFTL.

(F) The signature of the taxpayer or the taxpayer’s authorized representative.

(iii) The taxpayer must perfect any timely written request for an equivalent hearing that does not satisfy the requirements set forth in A-I1(ii) of this paragraph (i)(2) within a reasonable period of time after a request from the IRS. If the requirements are not satisfied within a reasonable period of time, the taxpayer's equivalent hearing request will be denied.

(iv) The taxpayer must affirm any timely written request for an equivalent hearing that is signed or alleged to have been signed on the taxpayer's behalf by the taxpayer's spouse or other unauthorized representative, and that otherwise meets the requirements set forth in A-I1(ii) of this paragraph (i)(2), by filing, within a reasonable period of time after a request from the IRS, a signed written affirmation that the request was originally submitted on the taxpayer's behalf. If the affirmation is filed within a reasonable period of time after a request, the timely equivalent hearing request will be considered timely with respect to the non-signing taxpayer. If the affirmation is not filed within a reasonable period of time, the equivalent hearing request will be denied with respect to the non-signing taxpayer.

* * * * *

Q-I6. Will a taxpayer be able to obtain Tax Court review

of a decision made by Appeals with respect to an equivalent hearing?

* * * * *

Q-I7. When must a taxpayer request an equivalent hearing with respect to a CDP Notice issued under section 6320?

A-I7. A taxpayer must submit a written request for an equivalent hearing within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL. This period is slightly different from the period for submitting a written request for an equivalent hearing with respect to a CDP Notice issued under section 6330. For a CDP Notice issued under section 6330, a taxpayer must submit a written request for an equivalent hearing within the one-year period commencing the day after the date of the CDP Notice issued under section 6330.

Q-I8. How will the timeliness of a taxpayer’s written request for an equivalent hearing be determined?

A-I8. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer’s request for an equivalent hearing, if properly transmitted and addressed as provided in A-I10 of this paragraph (i)(2).

Q-I9. Is the one-year period within which a taxpayer

must make a request for an equivalent hearing extended because the taxpayer resides outside the United States?

A-I9. No. All taxpayers who want an equivalent hearing concerning the filing of the NFTL must request the hearing within the one-year period commencing the day after the end of the five–business-day period following the filing of the NFTL.

Q-I10. Where must the written request for an equivalent hearing be sent?

A-I10. The written request for an equivalent hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice. If the address of the issuing office does not appear on the CDP Notice, the taxpayer should obtain the address of the office to which the written request should be sent or hand delivered by calling, toll-free, 1-800-829-1040 and providing the taxpayer’s identification number (e.g., SSN, ITIN or EIN).

Q-I11. What will happen if the taxpayer does not request an equivalent hearing in writing within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL?

A-I11. If the taxpayer does not request an equivalent hearing with Appeals within the one-year period commencing the day after the end of the five-business-day period following

the filing of the NFTL, the taxpayer foregoes the right to an equivalent hearing with respect to the unpaid tax and tax periods shown on the CDP Notice. A written request submitted within the one-year period that does not satisfy the requirements set forth in A-I1(ii) of this paragraph (i)(2) is considered timely if the request is perfected within a reasonable period of time pursuant to A-I1(iii) of this paragraph (i)(2). If a request for equivalent hearing is untimely, either because the request was not submitted within the one-year period or not perfected within the reasonable period provided, the equivalent hearing request will be denied. The taxpayer, however, may seek reconsideration by the IRS office collecting the tax, assistance from the National Taxpayer Advocate, or an administrative hearing before Appeals under its Collection Appeals Program or any successor program.

(j) Effective date. This section is applicable on or after November 16, 2006 with respect to requests made for CDP hearings or equivalent hearings on or after November 16, 2006.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: October 6, 2006

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).